



April 9, 2002

The Honorable Michael Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Room 8-B201
Washington, DC 20554

Re: Auction of Licenses in the 698-746, 747-762 and 777-792 MHz Bands
Scheduled for June 19, 2002
WT Docket No. 99-168 and ET Docket 00-258 Ex Parte Filing

Dear Chairman Powell:

Motorola, Inc. ("Motorola"), respectfully requests that the Commission delay the auction of the above referenced electromagnetic spectrum, currently scheduled for June 19, 2002, until such time as a comprehensive plan is developed for making the spectrum available. Such action meets the Commission's obligation to provide sound spectrum management, and the President's, Congress', and Commission's goals of facilitating the timely transition to digital television and making spectrum available for advanced services.

While the 698-746 MHz ("Lower 700 MHz") band is subject to a statutory requirement that receipts from the auction be deposited in the treasury by September 30, 2002, the Commission has previously weighed conflicting mandates and found that its public interest obligation was more compelling than meeting a requirement to hold an auction by a specified date. Indeed, there was a statutory deadline that auction proceeds from the 747-762 and 777-792 MHz ("upper 700 MHz") bands be deposited by September 30, 2000. However, the Commission found that holding such an auction under then existing conditions conflicted with statutory requirements governing spectrum management. Faced with conflicting obligations, the Commission correctly favored its mandate to provide sound spectrum management and delayed the auction pending resolution of outstanding issues. The Congress has not objected and, in fact, concurred with this action.¹ The conditions that led to previous delays in the auction still exist; nonetheless, the Commission has scheduled the auction to begin on June 19, 2002. It disserves the public interest to auction the spectrum under current conditions and the Commission

¹ See Letter dated May 5, 2000 from Senate Budget Committee Chairman Pete V. Domenici to Commission Chairman William E. Kennard and Letter dated July 29, 2000 from Senate Appropriations Committee Chairman Ted Stevens to Commission Chairman William E. Kennard.

should stand by its previous resolve to provide effective spectrum management and should delay auction of this spectrum until a number of issues can be thoughtfully solved.

The Commission is engaged in a number of proceedings involving complex spectrum management issues. Most notably the Commission has a proceeding to identify additional spectrum to support the introduction of advanced wireless services, including third generation wireless systems, and a proceeding to improve Public Safety Communications in the 800 MHz band.² In both of these proceedings, the Commission is evaluating numerous options for relocating incumbent operations, seeking to resolve difficult interference issues, and seeking to provide spectrum for new services. The 700 MHz spectrum could play a significant role in resolving the difficult issues before the Commission in these proceedings. Therefore it is our belief that the Commission should not squander the opportunity to assemble a comprehensive strategy, developed as a cooperative effort with NTIA and industry, by auctioning off this spectrum prematurely.

Closely linked with the Commission's proceeding to identify additional spectrum for advanced services, the Commission is engaged with NTIA in a study of the 1710-1770 MHz and 2110-2170 MHz bands to determine if they can be made available for commercial use. The results of this effort are not expected to be known until after the scheduled June 19th auction date of the 700 MHz spectrum. It is not possible for mobile service providers to make accurate business judgments about the need to participate in the 700 MHz auction without knowing whether the 120 MHz of spectrum under consideration in the NTIA and FCC study will be available for commercial service. In the past, the Commission has wisely postponed auctions to allow potential bidders the benefit of adequately assessing the market and availability of spectrum. Indeed, the Congress has expressly given the Commission the authority and responsibility to do so.³ It is in the public interest that competitors and potential licensees have sufficient opportunity to assess their interest in obtaining spectrum licenses and how those National assets would be deployed.

Central factors leading to previous Commission decisions to delay the auction, and Congressional agreement with those decisions, apply equally today. The incumbency of the frequencies by UHF television broadcast licensees makes bidder planning particularly challenging. While the Commission has adopted voluntary mechanisms for relocating broadcasters through negotiated buyouts by new licensees, these voluntary mechanisms provide no certainty as to when or if the spectrum will actually be available. Your recent call for voluntary efforts by the broadcast, cable, and manufacturing communities to move quickly on initiatives that will speed the transition to digital television is an important step in freeing the spectrum for other services, including public safety.⁴ However, with the spectrum auction looming, additional time is required to judge the full

² ET Docket 00-258 and WT Docket 02-55, respectively.

³ 47 U.S.C. 309(j)(3)(E)(ii)

⁴ See Letter dated April 4, 2002 from FCC Chairman Michael K. Powell to the House Energy and Commerce Committee Chairman W.J. "Billy" Tauzin and Letter dated April 4, 2002 from FCC Chairman Michael K. Powell to Senate Commerce, Science and Transportation Committee Chairman Fritz Hollings

impact that your leadership will have in bringing certainty to the availability of this spectrum.

The current uncertainty regarding actual availability of this spectrum will have a detrimental effect on both the monies received at auction, which could be used to free up this or other spectrum for actual use, and, more importantly, on the ability for businesses to plan for use of the spectrum. The Administration recognizes these detrimental impacts and has proposed legislation that would give additional certainty as to the availability of this spectrum. In both the President's budget proposal and in legislative language submitted to the Congress, the Administration seeks to delay the auction of the upper 700 MHz frequencies until 2004 and the lower 700 MHz frequencies until 2006.⁵ The Administration has also proposed legislation that would provide significant incentives for broadcasters to transition to digital by imposing fees on stations that delay in the transition, and legislation that would require broadcasters to vacate the 700 MHz spectrum by a date certain. Moving forward with an auction of the spectrum, as currently scheduled, would undermine the President's attempts to provide a clear and certain path to a transition to digital TV and to make spectrum available for new services in as meaningful a way as possible. Indeed, the absence of movement on many of the factors necessary to advance the DTV transition has made this process less successful than had been anticipated for this point in time. You have made significant efforts to improve this situation. Additional time is required pursue and determine the effect of these efforts, including your recent proposal.

While the President's proposal is persuasive in its own right, his signature on enacted legislation ought not be a requirement for the delay of the auction of these frequencies. Furthermore, a delay does not, at this point in time, contravene Congress' previous budgetary intent with respect to an auction now already thoughtfully delayed beyond the enacted deadline and which was, indeed, done with the assent of leading legislators. In point of fact, greater certainty in the band, gained over the time of a delay, may give greater amplitude to Congress' prerogatives and the Commission's management success.

Considering these circumstances, the considerable interest on the part of the Commission, Administration, Congress, industry, and the public safety community in the DTV migration, and the need for nationwide public safety access to the band for homeland security communications, careful consideration ought to be made with respect to how these frequencies should be put to use before they are auctioned.

For the foregoing reasons, the 700 MHz auction ought to be delayed, for the public good, until the uncertainties surrounding availability of this spectrum are resolved. Taking the time necessary to thoughtfully resolve the attendant complexities in this band of frequencies will serve the public interest and permit the Commission to carry out one of the principal missions entrusted to it by the Congress -- to exercise sound spectrum management principles and thereby to put the Nation's airwaves to the highest and best use.

⁵ See letter dated February 28, 2002, from Theodore W. Kassing, General Counsel of the United States Department of Commerce, to Richard B. Cheney, President of the Senate.

Conducting the auction at this time and in this environment contravenes our shared interest in achieving greater certainty and clarity before any subject licenses go to auction. Allowing additional time for Commission deliberation of outstanding issues is supported by the law and will benefit the public.

Indeed, the deadline for short form submissions is near. We respectfully request expedited consideration of this request, and urge the Commission to take the steps necessary to postpone the 700 MHz auction consistent with the Administration's request and the public interest.

Respectfully submitted,

Richard C. Barth, Ph.D.
Vice President and Director
Telecommunications Strategy

cc: Commissioner Abernathy
Commissioner Copps
Commissioner Martin
Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau
Edmond J. Thomas, Chief, Office of Engineering and Technology